

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Before the Court is a Letter, (ECF No. 381), filed by Defendant Eric Tyrone Jackson (“Defendant”). The Letter requests that the Court issue a recommendation to the Bureau of Prisons (“BOP”) that Defendant’s state and federal sentences be run concurrently. (*See generally* Letter, ECF No. 381). On September 9, 2020, this Court entered a Minute Order directing the Government and Defendant’s counsel to file briefs addressing the concurrency of Defendant’s federal sentence and later-imposed state sentence. (Min. Order, ECF No. 382). The Government, Defendant’s counsel, and Defendant, *pro se*, each filed Responses to the Minute Order. (*See* Responses, ECF Nos. 384–86). For the reasons discussed below, the Court **GRANTS** Defendant’s request for recommendation to the Bureau of Prisons.

On May 16, 2013, this Court sentenced Defendant to 104-months custody following his guilty plea to one count of Armed Bank Robbery in violation of 18 U.S.C. § 2113(a) and (d) and one count of Brandishing a Firearm in violation of 18 U.S.C. § 924(c)(1)(A)(ii). (See Superseding Indictment, ECF No. 45); (Mins. Proceedings, Change of Plea, ECF No. 68); (Mins. Proceedings, Sentencing and Disposition, ECF No. 98); (J., ECF No. 100). Defendant was ordered to serve 20-months custody on the Armed Bank Robbery count to run consecutively to 84-months custody on the Brandishing a Firearm count. (See J. at 2). After

1 being sentenced by this Court, Defendant was returned to state custody to be tried on one count
2 of home invasion and three counts of robbery with a deadly weapon. (See PSR ¶¶ 32–35).
3 Defendant began his incarceration in state custody and now requests that he receive credit for
4 time served in state custody toward his federal sentence. (Letter at 1–2).

5 Federal judges generally have the authority to order a federal sentence to run either
6 consecutively or concurrently with any other sentence. *See* 18 U.S.C. § 3584. However, the
7 sentencing judge’s power to order sentences to run concurrently only applies to sentences
8 already imposed; courts may not order concurrency of a federal sentence with a not-yet-existing
9 state sentence. *See Taylor v. Sawyer*, 284 F.3d 1143 (9th Cir. 2002). After sentencing, the
10 federal Bureau of Prisons retains exclusive jurisdiction to alter the computation for time a
11 defendant has served toward his federal sentence and to designate the facility at which a
12 defendant serves in custody. *See* 18 U.S.C. § 3585(b); 18 U.S.C. § 3621(b); *see also United*
13 *States v. Wilson*, 503 U.S. 329, 335 (1992). However, the sentencing court may recommend
14 that the Bureau of Prisons grant a *nunc pro tunc* designation for the defendant to serve his
15 federal sentence in a state facility when the designation “is consistent with the intent of the
16 federal sentencing court or with the goals of the criminal justice system.” *See* BOP Policy
17 Statement 5160.05(3)(a) and 5160.05(9); *see also Taylor*, 284 F.3d at 1148–49.

18 As an initial matter, the Court notes that only Defendant’s 20-month armed bank
19 robbery sentence may be run concurrently to Defendant’s state sentence because the sentence
20 for brandishing a firearm must be run consecutively to all other sentences. *See* 18 U.S.C. §
21 924(c)(1)(D) (prohibiting sentences imposed under 18 U.S.C. § 924(c) from running
22 concurrently with any other sentence); *United States v. Gonzales*, 520 U.S. 1, 11 (1997)
23 (clarifying that the prohibition includes concurrency between state sentences and federal
24 sentences imposed under § 924(c)). However, it is the intent of the Court that Defendant’s
25 armed bank robbery conviction be run concurrently with Defendant’s state sentence.

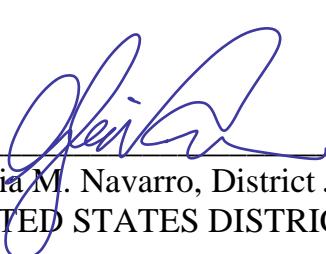
1 Defendant received his federal sentence at a young age, his armed bank robbery conviction is
2 similar to the conduct for which he was sentenced in state court, and the Court would have
3 ordered the state sentence to run concurrently with the federal armed bank robbery sentence
4 had the state sentence first been imposed. The recommendation is consistent with Defendant's
5 state court Judgment of Conviction, which has been amended to enable concurrent federal and
6 state sentences. (See Am. State J., Ex. 2 to Letter 2:20-23, ECF No. 381) ("THEREAFTER, on
7 the 15th day of April, 2014, pursuant to Status Check: Judgment of Conviction, COURT
8 ORDERED the Second Amended Judgment of Conviction to reflect **CONCURRENCT** with
9 Federal Time and not CONSECUTIVE to Federal Time") (emphasis original).

10 Accordingly,

11 **IT IS HEREBY ORDERED** that the Court **RECOMMENDS** the BOP grant
12 Defendant a *nunc pro tunc* designation to serve his armed bank robbery conviction in a state
13 facility.

14 **IT IS FURTHER ORDERED** that the Government shall provide a copy of this Order
15 to the administrators within the BOP who are empowered to grant Defendant the recommended
16 *nunc pro tunc* designation.

17 Dated this 3 day of November, 2020.

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22 Gloria M. Navarro, District Judge
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UNITED STATES DISTRICT COURT